

# Exhibit C

DONALD F. ZIMMER, JR. (SBN 112279)  
fzimmer@kslaw.com  
CHERYL A. SABNIS (SBN 224323)  
csabnis@kslaw.com  
KING & SPALDING LLP  
101 Second Street – Suite 2300  
San Francisco, CA 94105  
Telephone: (415) 318-1200  
Facsimile: (415) 318-1300

IAN C. BALLON (SBN 141819)  
ballon@gtlaw.com  
HEATHER MEEKER (SBN 172148)  
meekerh@gtlaw.com  
GREENBERG TRAURIG, LLP  
1900 University Avenue  
East Palo Alto, CA 94303  
Telephone: (650) 328-8500  
Facsimile: (650) 328-8508

SCOTT T. WEINGAERTNER (*Pro Hac Vice*)  
sweingaertner@kslaw.com  
ROBERT F. PERRY  
rperry@kslaw.com  
BRUCE W. BABER (*Pro Hac Vice*)  
bbaber@kslaw.com  
KING & SPALDING LLP  
1185 Avenue of the Americas  
New York, NY 10036-4003  
Telephone: (212) 556-2100  
Facsimile: (212) 556-2222

Attorneys for Defendant  
GOOGLE INC.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

ORACLE AMERICA, INC.

Plaintiff,

v.

GOOGLE INC.

Defendant.

Case No. 3:10-cv-03561-WHA

Honorable Judge William Alsup

**DEFENDANT GOOGLE INC.'S  
SUPPLEMENTAL RESPONSES TO  
PLAINTIFF'S INTERROGATORIES, SET  
ONE, NOS. 4-16**

**SPECIFIC OBJECTIONS AND RESPONSES**

Google's responses to Plaintiff's Interrogatories are based upon Google's current information and belief as a result of reasonable searches and inquiries. Google reserves its right to amend and supplement its responses as it learns additional facts.

**INTERROGATORY NO. 4:**

Please explain the factual and legal bases for Google's pleading of its third affirmative defense: Patent Unenforceability (Waiver, Estoppel, Laches).

**SUPPLEMENTAL RESPONSE:**

In addition to its General Objections, Google objects to this Interrogatory as it seeks information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege, immunity, or protection. Google further objects to this Interrogatory as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible information. Google further objects to the request to "explain" factual bases as vague and ambiguous. Google further objects to any implication in this Interrogatory that Google has any burden beyond what is required by any applicable statute or case law. Google further objects to any implication that the theories of patent unenforceability included under this heading in Google's Answer and Counterclaims necessarily share common factual or legal bases.

Google further objects to the extent that certain factual contentions involved in the pleading of these theories were made "upon information and belief" that, after a reasonable opportunity for further investigation, Google would likely have evidentiary support. Google has served discovery requests related to this defense but has not yet received completion of production of responsive information. Google further objects on the basis that Oracle has produced excessive amounts of non-responsive and irrelevant documents, produced incomplete materials in a haphazard manner, withheld what are likely the most pertinent documents to many defenses based on a broad privilege screen, removed "exception" documents with certain non-searchable attachments for manual review (which has not been completed), and inexplicably taken months to produce certain plainly relevant documents despite repeated requests and

1 assurances that it was collecting responsive documents. The combined effect of the foregoing is  
2 that review of Oracle's production has been exceedingly difficult as Google has to sift through  
3 large quantities of non-responsive and irrelevant documents such as personal photographs and  
4 junk e-mail. Further, Google believes due to Oracle's approach, the most pertinent information  
5 to Google's defenses has yet to be produced by Oracle despite being over half way through fact  
6 discovery.

7 Inclusion of Oracle's allegations in the list of facts in this response does not mean that  
8 Google agrees with the veracity of the allegation, but merely references the fact that particular  
9 allegations were made. Google expressly maintains all objections made in responsive pleadings.  
10 Google further objects to this Interrogatory as unnecessary in view of the specific disclosures  
11 contemplated by the Patent Local Rules as well as premature at least because claim terms have  
12 not been construed and any response herein is made in view of the lack of certainty with respect  
13 to the resolution of the meaning of claim terms.

14 Subject to the foregoing objections and the General Objections, without waiver or  
15 limitation thereof, Google states that the following facts relevant to this defense were in its  
16 possession or accessible to Google at the time it pleaded this defense in its Answer and  
17 Counterclaims:

- 18 • Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- 19 • Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- 20 • Allegations contained in presentation materials received from Oracle pursuant to Rule 408 of  
21 the Federal Rules of Evidence.
- 22 • The patents-in-suit and their prosecution histories.
- 23 • Publicly available documents with information regarding the statements and actions of  
24 Oracle and its predecessor Sun Microsystems, Inc. including the information disclosed in  
25 paragraphs 1 through 10 of the counterclaims asserted in Google's Answer and  
26 Counterclaims under the heading "The Java Platform and Programming Language," as well  
27 as the information produced at GOOGLE-00305323 through GOOGLE-00305769.

- 1 • Publicly available documents with information regarding the development of the Android  
2 Platform, including the information disclosed in paragraphs 11 through 17 of the  
3 counterclaims asserted in Google's Answer and Counterclaims under the heading "The Open  
4 Handset Alliance and Development of the Android Platform."
- 5 • Facts relating to the market for Android as disclosed in paragraphs 20 through 22 under the  
6 heading "Android and the Java Programming Language" of Google's Answer and  
7 Counterclaims. These facts are publicly available, *see, e.g.*, GOOGLE-00320072 through  
8 GOOGLE-00320077.

9 Google further states that, as reflected in Oracle's Final Patent L.R. 3-1 Contentions,  
10 Oracle was aware of Android pursuant to discussions with Andy Rubin prior to Android's  
11 acquisition by Google, which are believed to have occurred at least as early as 2005. Also, on  
12 May 26, 2006, Oracle representatives met with Andy Rubin to discuss CDC-HI and open source.  
13 *See, e.g.*, OAGOOOGLE0100029446. Google further states that Sun believed Android to  
14 allegedly infringe Sun's proprietary rights at least as early as these discussions, but no later than  
15 November 15, 2007, which knowledge is properly attributed to Oracle. *See* Deposition of  
16 Andrew E. Rubin, 26:7-11; OAGOOOGLE0000240996.

17 On information and belief, Sun never intended to assert patent infringement claims  
18 against Google relating to Android and Google relied on Sun's position. *See, e.g.*, Steve Lohr,  
19 *Software War Pits Oracle v. Google*, N.Y. Times, August 30, 2010 ("Sun eventually chose not to  
20 sue Google, the former Sun manager said, because it decided a patent lawsuit would undercut the  
21 company's open-source efforts under Jonathan Schwartz, Sun's chief executive who resigned in  
22 February after the Oracle acquisition."). In fact, former Sun CEO Jonathan Schwartz  
23 congratulated Google when Android was announced and publicly commented that "[t]oday is an  
24 incredible day for the open source community, and a massive endorsement of two of the  
25 industry's most prolific free software communities . . . ."  
26 [http://blogs.sun.com/jonathan/entry/congratulations\\_google](http://blogs.sun.com/jonathan/entry/congratulations_google). In addition, in an October 24, 2008  
27 presentation entitled "Compatibility is Optional," Sun cites to Android as an example of an  
28

1 alleged “incompatible implementation” that Sun had been unwilling to enforce legal rights  
 2 against. *See* OAGOOOGLE0000110526\_00002106. In that same presentation, Sun claims that  
 3 “Dalvik is essentially a fine-tuned version of Java, which Google made to avoid licensing fees,”  
 4 but ultimately concludes that Sun should pursue a policy that “compatibility is optional” or in  
 5 other words, not pursue or threaten litigation against Google. *See id.* Further, Sun continuously  
 6 touted the fact that Java is meant to be open source and free. *See, e.g.,*  
 7 OAGOOOGLE0000110534\_00121381, Java SE Open Source: Communications and Marketing  
 8 Plan dated October 4, 2006 (Regarding November 6<sup>th</sup> Launch: “What we’ll say: ‘Java is Free!’”).  
 9 Indeed, based on this open source policy, some Sun representatives believed that they could not  
 10 even “sue Google . . . given this [Java] is Open Source.” *See* OAGOOOGLE0000240996.

11        Nevertheless, despite Sun’s publicly stated position and Google’s reliance on the same,  
 12 Oracle (after acquiring Sun and the patents-in-suit) waited several years before bringing suit,  
 13 while the Android market grew and while Google and numerous handset manufacturers and  
 14 other entities made significant investments in the Android Platform. Google further states that  
 15 Oracle’s actions cited herein, including statements and actions of its predecessor Sun  
 16 encouraging use of the Java programming language, form the basis of Google’s defenses  
 17 involving waiver, estoppel and laches. Sun’s / Oracle’s delay was unreasonable, Google  
 18 reasonably relied on Sun’s / Oracle’s acquiescence and delay; and, if Sun or Oracle had asserted  
 19 claims earlier, Google could have made different choices regarding the inclusion of certain  
 20 elements in Android. Sun’s / Oracle’s delay has been prejudicial to Google in several respects,  
 21 including that numerous relevant documents (including patent-related correspondence by the  
 22 inventors) were apparently not maintained by Sun / Oracle, memories of witnesses have faded,  
 23 and Google has been required to expend significant resources defending Oracle’s late claims.

24 **INTERROGATORY NO. 5:**

25        Please explain the factual and legal bases for Google’s pleading of its fourth affirmative  
 26 defense: Substantial Non-Infringing Uses (Patent).

1 operation. To invoke the functionalities of any API (such as `math.abs()`), a programmer simply  
2 uses the appropriate method name. In addition, the following three Java APIs are unprotectable  
3 because they were released into the public domain by their author, Doug Lea:

4 `java.util.concurrent`, `java.util.concurrent.atomic`, and `java.util.concurrent.locks`.

5 In addition, any similarities between any protectable elements of the Asserted Works and  
6 the Android Platform are, at most, *de minimis* and not actionable. Google has served  
7 Interrogatories to obtain further details regarding Oracle's copyright allegations and requires  
8 complete responses to those Interrogatories to respond more completely to this Interrogatory.  
9 Google therefore reserves the right to supplement this response accordingly.

10 **INTERROGATORY NO. 10:**

11 Please explain the factual and legal bases for Google's pleading of its eleventh  
12 affirmative defense: Copyright Unenforceability (Waiver, Estoppel, Laches).

13 **SUPPLEMENTAL RESPONSE:**

14 In addition to its General Objections, Google objects to this Interrogatory as it seeks  
15 information protected by the attorney-client privilege, the work product doctrine, and/or any  
16 other applicable privilege, immunity, or protection. Google further objects to this Interrogatory  
17 as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible  
18 information. Google further objects to the request to "explain" factual bases as vague and  
19 ambiguous. Google further objects to any implication in this Interrogatory that Google has any  
20 burden beyond what is required by any applicable statute or case law. Google further objects to  
21 any implication that the theories of copyright unenforceability included under this heading in  
22 Google's Answer and Counterclaims necessarily share common factual or legal bases. Google  
23 further objects to the extent that certain factual contentions involved in the pleading of these  
24 theories were made "upon information and belief," that after a reasonable opportunity for further  
25 investigation, Google would likely have evidentiary support.

26 Google has served discovery requests related to this defense but has not yet received  
27 completion of production of responsive information. Google further objects on the basis that  
28

Oracle has produced excessive amounts of non-responsive and irrelevant documents, produced incomplete materials in a haphazard manner, withheld what are likely the most pertinent documents to many defenses based on a broad privilege screen, removed “exception” documents with certain non-searchable attachments for manual review (which has not been completed), and inexplicably taken months to produce certain plainly relevant documents despite repeated requests and assurances that it was collecting responsive documents. The combined effect of the foregoing is that review of Oracle’s production has been exceedingly difficult as Google has to sift through large quantities of non-responsive and irrelevant documents such as personal photographs and junk e-mail. Further, Google believes due to Oracle’s approach, the most pertinent information to Google’s defenses has yet to be produced by Oracle despite being over half way through fact discovery.

Inclusion of Oracle’s allegations in the list of facts in this response does not mean that Google agrees with the veracity of the allegation, but merely references the fact that particular allegations were made. Google expressly maintains all objections made in responsive pleadings.

Subject to the foregoing objections and the General Objections, without waiver or limitation thereof, Google states that the following facts relevant to this defense were in its possession or accessible to Google at the time it pleaded this defense in its Answer and Counterclaims:

- Allegations contained in Oracle’s Complaint and Exhibits (Doc. #1).
- Facts contained or cited in Google’s Motion to Dismiss (Doc. #33).
- Allegations contained in Oracle’s Amended Complaint and Exhibits (Doc. #36).
- Allegations contained in Oracle’s Opposition to Google’s Motion to Dismiss (Doc. #40).
- Publicly available information relating to the Asserted Works including the documents produced at GOOGLE-00319933 through GOOGLE-00320071.
- Publicly available documents with information regarding the statements and actions of Oracle and its predecessor Sun Microsystems, Inc. including the information disclosed in paragraphs 1 through 10 of the counterclaims asserted in Google’s Answer and



- 1 Counterclaims under the heading “The Java Platform and Programming Language,” as well  
 2 as the information produced at GOOGLE-00305323 through GOOGLE-00305769.
- 3 • Publicly available documents with information regarding the development of the Android  
 4 Platform, including the information disclosed in paragraphs 11 through 17 of the  
 5 counterclaims asserted in Google’s Answer and Counterclaims under the heading “The Open  
 6 Handset Alliance and Development of the Android Platform.”
  - 7 • Facts relating to the market for Android as disclosed in paragraphs 20 through 22 under the  
 8 heading “Android and the Java Programming Language” of Google’s Answer and  
 9 Counterclaims. These facts are publicly available, *see, e.g.*, GOOGLE-00320072 through  
 10 GOOGLE-00320077.

11 Google expressly incorporates by references its response to Interrogatory No. 4. Google  
 12 further states that, as reflected in Oracle’s Patent Local Rule 3-1 disclosures, Oracle was aware  
 13 of Android pursuant to discussions with Andy Rubin prior to Android’s acquisition by Google,  
 14 which are believed to have occurred at least as early as 2005. Also, on May 26, 2006, Oracle  
 15 representatives met with Andy Rubin to discuss CDC-HI and open source. *See, e.g.*,  
 16 OAGOOOGLE0100029446. Google further states that Sun believed Android to allegedly infringe  
 17 Sun’s proprietary rights at least as early as these discussions, but no later than November 15,  
 18 2007, which knowledge is properly attributed to Oracle. *See* Deposition of Andrew E. Rubin,  
 19 26:7-11; OAGOOOGLE0000240996. Google further states that Oracle was aware of Android and  
 20 the Open Handset Alliance, at least as early as November 2007, as reflected by Jonathan  
 21 Schwartz’s public comments congratulating Google and the Open Handset Alliance on the  
 22 announcement of Android.

23 Oracle nevertheless delayed several years before bringing suit (even though the Android  
 24 source code was publicly available), while the Android market grew and while Google and  
 25 numerous handset manufacturers and other entities made significant investments in the Android  
 26 Platform. Google further states that Oracle’s actions, including statements and actions of its  
 27 predecessor Sun encouraging use of the Java programming language and congratulating Google  
 28

1 on the launch of Android, form the basis of Google's defenses of waiver, estoppel and laches.  
2 Sun's / Oracle's delay was unreasonable, Google reasonably relied on Sun's / Oracle's  
3 acquiescence and delay; and, if Sun or Oracle had asserted claims earlier, Google could have  
4 made different choices regarding the inclusion of certain elements in Android. Sun's / Oracle's  
5 delay has been prejudicial to Google in several respects, including that numerous relevant  
6 documents (including complete copies of the Asserted Works themselves) were apparently not  
7 maintained by Sun / Oracle, memories of witnesses have faded, and Google has been required to  
8 expend significant resources defending Oracle's late claims.

9 Google further states that, upon information and belief, Oracle knew at least as early as  
10 May 2005 that elements of the Android Platform were made publicly available by the Apache  
11 Software Foundation under the terms of the Apache Software License version 2.0 and that use of  
12 these elements was necessary to allow for interoperability. Google further states that, upon  
13 information and belief, Oracle knew at least as early as April 2004 that elements of the Java  
14 platform were made publicly available by the GNU Project. Upon information and belief, Oracle  
15 has never pursued any claim against the Apache Software Foundation or the GNU Project or  
16 accused the materials created by the Apache Harmony Project or the GNU Classpath Project of  
17 infringement and it is a publicly known fact that many members of the software development  
18 community have relied upon the availability of software code embodied in the Apache Harmony  
19 Project materials under the terms of the Apache Software License version 2.0, or embodied in  
20 the GNU Classpath Project materials under the terms of the GNU General Public License, and  
21 used or distributed that code under those terms. Google has a reasonable belief that the  
22 discovery it has requested will reveal additional evidence to support this defense and reserves the  
23 right to supplement this response accordingly.

24 **INTERROGATORY NO. 11:**

25 Please explain the factual and legal bases for Google's pleading of its twelfth affirmative  
26 defense: Fair Use.

1 Subject to the foregoing objections and the General Objections, without waiver or  
 2 limitation thereof, Google states that the following facts relevant to this defense were in its  
 3 possession or accessible to Google at the time it pleaded this defense in its Answer and  
 4 Counterclaims:

- 5 • Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- 6 • Facts contained or cited in Google's Motion to Dismiss (Doc. #33).
- 7 • Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- 8 • Allegations contained in Oracle's Opposition to Google's Motion to Dismiss (Doc. #40).
- 9 • Publicly available information relating to the Asserted Works including the documents  
 10 produced at GOOGLE-00319933 through GOOGLE-00320071.
- 11 • Documents relating to third parties including statements of work, which are being withheld  
 12 pending third party permission to produce, and authorized contributor questionnaires  
 13 produced at GOOGLE-00320078 through GOOGLE-00320235.

14 Google further states that Google took reasonable steps to insure that any third parties  
 15 involved in the development of Android did not use or reference existing source code other than  
 16 materials that were in the public domain and/or openly available through permissive (or  
 17 equivalent) licenses. Examples of representations to this effect by such third parties are included  
 18 in the production cited. To the extent any third party or individual did not perform its tasks  
 19 according to Google's requirements, those actions were without Google's knowledge and are not  
 20 attributable to Google. Google further states that it identified third parties that contributed to the  
 21 development of Android in response to Interrogatory No. 1.

22 **INTERROGATORY NO. 15:**

23 Please explain the factual and legal bases for Google's pleading of its seventeenth and  
 24 eighteenth affirmative defenses: License and Implied License.

25 **SUPPLEMENTAL RESPONSE:**

26 In addition to its General Objections, Google objects to this Interrogatory as an explicit  
 27 multiple-part Interrogatory going to two different defenses and the following objections refer to  
 28

1 both distinct requests. Google further objects to this multi-part Interrogatory as seeking  
2 information protected by the attorney-client privilege, the work product doctrine, and/or any  
3 other applicable privilege, immunity, or protection. Google further objects to this multi-part  
4 Interrogatory as unduly burdensome as it is not reasonably calculated to lead to the discovery of  
5 admissible information. Google further objects to the request to “explain” factual bases as vague  
6 and ambiguous. Google further objects to any implication in this multi-part Interrogatory that  
7 Google has any burden beyond what is required by any applicable statute or case law. Google  
8 further objects to the extent that certain factual contentions involved in the pleading of these  
9 defenses were made “upon information and belief” that, after a reasonable opportunity for further  
10 investigation, Google would likely have evidentiary support.

11 Google has served discovery requests related to these defenses but has not yet received  
12 completion of production of responsive information. Google further objects on the basis that  
13 Oracle has produced excessive amounts of non-responsive and irrelevant documents, produced  
14 incomplete materials in a haphazard manner, withheld what are likely the most pertinent  
15 documents to many defenses based on a broad privilege screen, removed “exception” documents  
16 with certain non-searchable attachments for manual review (which has not been completed), and  
17 inexplicably taken months to produce certain plainly relevant documents despite repeated  
18 requests and assurances that it was collecting responsive documents. The combined effect of the  
19 foregoing is that review of Oracle’s production has been exceedingly difficult as Google has to  
20 sift through large quantities of non-responsive and irrelevant documents such as personal  
21 photographs and junk e-mail. Further, Google believes due to Oracle’s approach, the most  
22 pertinent information to Google’s defenses has yet to be produced by Oracle despite being over  
23 half way through fact discovery.

24 Inclusion of Oracle’s allegations in the list of facts in this response does not mean that  
25 Google agrees with the veracity of the allegation, but merely references the fact that particular  
26 allegations were made. Google expressly maintains all objections made in responsive pleadings.  
27 Google further objects to this multi-part Interrogatory as unnecessary with respect to the  
28

1 defenses as they pertain to patent in view of the specific disclosures contemplated by the Patent  
2 Local Rules.

3 Subject to the foregoing objections and the General Objections, without waiver or  
4 limitation thereof, Google states that the following facts relevant to this defense were in its  
5 possession or accessible to Google at the time it pleaded these defenses in its Answer and  
6 Counterclaims:

- 7 • Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- 8 • Facts contained or cited in Google's Motion to Dismiss (Doc. #33).
- 9 • Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- 10 • Allegations contained in Oracle's Opposition to Google's Motion to Dismiss (Doc. #40).
- 11 • Publicly available information relating to the Asserted Works including the documents  
12 produced at GOOGLE-00319933 through GOOGLE-00320071.
- 13 • Allegations contained in presentation materials received from Oracle pursuant to Rule 408 of  
14 the Federal Rules of Evidence.
- 15 • The patents-in-suit and their prosecution histories.
- 16 • Publicly available documents with information regarding the statements and actions of  
17 Oracle and its predecessor Sun Microsystems, Inc. including the information disclosed in  
18 paragraphs 1 through 10 of the counterclaims asserted in Google's Answer and  
19 Counterclaims under the heading "The Java Platform and Programming Language," as well  
20 as the information produced at GOOGLE-00305323 through GOOGLE-00305769.
- 21 • Publicly available documents with information regarding the development of the Android  
22 Platform, including the information disclosed in paragraphs 11 through 17 of the  
23 counterclaims asserted in Google's Answer and Counterclaims under the heading "The Open  
24 Handset Alliance and Development of the Android Platform."
- 25 • Facts relating to the market for Android as disclosed in paragraphs 20 through 22 under the  
26 heading "Android and the Java Programming Language" of Google's Answer and  
27  
28

1 Counterclaims. These facts are publicly available, *see, e.g.*, GOOGLE-00320072 through  
2 GOOGLE-00320077.

3 Google further states that, as presently understood, Oracle's allegations are directed  
4 toward one or more functionalities that are likely licensed by alleged direct infringers for at least  
5 some Accused Instrumentalities. Because Oracle has not specified with precision the Accused  
6 Instrumentalities and alleged direct infringers, Google cannot respond more completely to this  
7 Interrogatory. By way of example, certain of Oracle's allegations with regard to the '520 patent  
8 include its own program, javac, as a component of the allegation. In its Final Patent L.R. 3-1  
9 Contentions, Oracle has still not identified specific purported direct infringers and instead  
10 identified broad categories such as developers. Oracle has also significantly changed its  
11 allegations in its supplementation on April 1, although it still has not identified on a claim by  
12 claim basis the identity of alleged direct infringers performing each step of each claim, making  
13 Google's investigation into this defense difficult. Further, Oracle continues to produce licenses,  
14 including incomplete license portions produced in a haphazard manner. Google is still analyzing  
15 these new allegations and will supplement as it receives more information regarding Oracle's  
16 licenses.

17 Google further states that in the absence of an explicit license to asserted patents and  
18 copyrights, Google and other purported infringers are entitled to an implied license based on  
19 Oracle's actions, including the statements, actions and inactions of its predecessor Sun as  
20 referenced in Google's answers set forth above. Google has a reasonable belief that the  
21 discovery it has served but not yet received complete production of will reveal additional  
22 evidence to support this defense and reserves the right to supplement this response accordingly.

23 Google further states that, upon information and belief, Oracle knew at least as early as  
24 May 2005 that elements of the Android Platform were made publicly available by the Apache  
25 Software Foundation under the terms of the Apache Software License version 2.0 and that use of  
26 these elements was necessary to allow for interoperability. Upon information and belief, Oracle  
27 has never pursued any claim against the Apache Software Foundation or accused the materials  
28

1 created through the Apache Harmony Project of infringement and it is a publicly known fact that  
 2 many members of the software development community have relied upon the availability of  
 3 software code embodied in the Apache Harmony materials under the terms of the Apache  
 4 Software License version 2.0 and used or distributed that code under those terms. Google further  
 5 states that, on information and belief, starting in 1998, Professor Doug Lea wrote a software  
 6 package called “dl.util.concurrent,” and released it into the public domain by explicitly  
 7 disclaiming all rights in the software. *See, e.g.,*  
 8 <http://gee.cs.oswego.edu/dl/classes/EDU/oswego/cs/dl/util/concurrent/intro.html> Similarly, on  
 9 information and belief, starting in 1999 and continuing through at least 2005, Oracle’s  
 10 predecessor, Sun Microsystems, Inc., donated reference implementations for the javax.xml  
 11 packages to the Apache Foundation under the terms of the Apache Software License version 2.0.  
 12 *See, e.g.,* [http://mail-archives.apache.org/mod\\_mbox/xerces-j-](http://mail-archives.apache.org/mod_mbox/xerces-j-dev/200102.mbox/%3C3A7B534B.2017AE0F@eng.sun.com%3E)  
 13 [dev/200102.mbox/%3C3A7B534B.2017AE0F@eng.sun.com%3E](http://mail-archives.apache.org/mod_mbox/xerces-j-dev/200102.mbox/%3C3A7B534B.2017AE0F@eng.sun.com%3E).

14 Google further states that Oracle continues to produce licenses that were requested  
 15 several months ago with the most recent production dated April 1, 2011, and Google has not had  
 16 a meaningful opportunity to review all of the licenses. Google has a reasonable belief that the  
 17 discovery it has requested will reveal additional evidence to support this defense and reserves the  
 18 right to supplement this response accordingly.

19 **INTERROGATORY NO. 16:**

20 Please explain the factual and legal bases for Google’s pleading of its nineteenth  
 21 affirmative defense: Unclean Hands.

22 **SUPPLEMENTAL RESPONSE:**

23 In addition to its General Objections, Google objects to this Interrogatory as seeking  
 24 information protected by the attorney-client privilege, the work product doctrine, and/or any  
 25 other applicable privilege, immunity, or protection. Google further objects to this Interrogatory  
 26 as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible  
 27 information. Google further objects to the request to “explain” factual bases as vague and  
 28



1 License version 2.0, or embodied in the GNU Classpath Project materials under the terms of the  
2 GNU General Public License, and used or distributed that code under those terms. Google has a  
3 reasonable belief that the discovery it has requested will reveal additional evidence to support  
4 this defense and reserves the right to supplement this response accordingly.

5  
6 DATED: April 25, 2011

**KING & SPALDING LLP**

7  
8 By: /s/ Scott T. Weingaertner

9 SCOTT T. WEINGAERTNER (*Pro Hac Vice*)

10 sweingaertner@kslaw.com

11 ROBERT F. PERRY

12 rperry@kslaw.com

13 BRUCE W. BABER (*Pro Hac Vice*)

14 bbaber@kslaw.com

15 1185 Avenue of the Americas

16 New York, NY 10036-4003

17 Telephone: (212) 556-2100

18 Facsimile: (212) 556-2222

19 DONALD F. ZIMMER, JR. (SBN 112279)

20 fzimmer@kslaw.com

21 CHERYL A. SABNIS (SBN 224323)

22 csabnis@kslaw.com

23 KING & SPALDING LLP

24 101 Second Street – Suite 2300

25 San Francisco, CA 94105

26 Telephone: (415) 318-1200

27 Facsimile: (415) 318-1300

28 IAN C. BALLON (SBN 141819)

ballon@gtlaw.com

HEATHER MEEKER (SBN 172148)

meekerh@gtlaw.com

GREENBERG TRAURIG, LLP

1900 University Avenue

East Palo Alto, CA 94303

Telephone: (650) 328-8500

Facsimile: (650) 328-8508

ATTORNEYS FOR DEFENDANT

GOOGLE INC.